

NO PROTEST RECEIVED. CLOSED BY
REVIEW. [REDACTED] 4/12/96

Internal Revenue Service
District Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:
EP/EO

Employer Identification Number:

Date: MAR 21 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

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If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours

[REDACTED]

District Director

Enclosures: 3

ENCLOSURE I

[REDACTED]

Information submitted reveals that the organization was incorporated under the laws of the State of [REDACTED] on [REDACTED]. The organization submitted the Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Code on [REDACTED].

The Articles of Incorporation provide that the purposes of the organization, in part, are for charitable purposes, to provide financial assistance in relief of the poor and underprivileged members of the community, to engage in humanitarian endeavors through the use of motorcycles, and to hold fundraisers to benefit charities. The Articles further provide that the corporation is organized for motorcycling enthusiasts who enjoy the pleasures of motorcycling and motorcycles and related motorcycling activities and to promote and develop community interest in, and to advance the knowledge and appreciation of motorcycling and all related activities.

The Constitution provides that the active members of the organization shall be riders of motorcycles and their spouses. This is the only class of membership with voting rights. The honorary members have no voting powers. These "associate" members will be supplied with a yearly schedule of events for \$[REDACTED], 1 year with no controlling interest or voting power, and shall be persons actively concerned with the trade of motorcycles or shall be motorcycle enthusiasts.

Your application, Form 1023 provides a list of activities to be conducted by your organization. Activities included poker runs, a week-end long bike show, a week-end long "[REDACTED]" including games, bike pulls, weight transfer, and bike showings; and meetings every other Sunday.

One of the flyers submitted indicates that the price for the poker run is \$10.00 and will include a hog roast, refreshments, and live entertainment with partial proceeds to charity.

In response to our request for additional information about the activities conducted by the organization, you indicated that all events are open to the general public.

Your application also revealed that part of the dues is used to send flowers to members and their immediate family members for funerals or hospital stays.

The sources of income for the organization include fundraising (events income), membership dues, and donations. The expenses incurred by the organization include fundraising expenses, donations, occupancy, flowers and refreshments.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of:

ENCLOSURE I CONTINUED

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states:

The term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds that the existence of single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3) of the Code. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes.

In Revenue Ruling 69-279, 1969-1 C.B. 151, a trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot was held not to be charitable within the meaning of section 501(c)(3) Code because private interests were served.

Revenue Ruling 64-182, 1964-2 C.B. 186, provides that an organization with fundraising as its principal source of income must carry on a charitable program commensurate in scope with its financial resources.

ENCLOSURE I CONTINUED

[REDACTED]

Based on the information submitted, it appears that your exempt activities are minimal and merely incidental to your conduct of recreational-type events for motorcycle enthusiasts. Therefore, the principal of Better Business Bureau v. United States is applicable to you. Furthermore, the fact that you have such limited charitable distributions (i.e. less than 1% of gross receipts in [REDACTED]) shows that you do not operate a substantial charitable program which is commensurate in scope with your "fundraising" as described in Revenue Ruling 64-182.

In addition, the net income of your organization is inuring to the benefit of private individuals, your members, in that you are spending organizational funds to purchase flowers for members whereby private interests are served as described in Revenue Ruling 69-279.

Therefore, your organization does not meet the operational test for exemption under section 501(c)(3). Because you do not meet the operational test of the Income Tax Regulations, you are not exempt under section 501(c)(3) of the Code.